

SENATE BILL 3047

By Finney R.

AN ACT to amend Tennessee Code Annotated, Title 36,
Chapter 6, Part 1, relative to de facto child
custody.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, Part 1, is amended by
inserting the following as a new section thereto:

(a) As used in this section, unless the context otherwise requires, “de facto custodian” means an individual who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the individual for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older. However, a de facto custodian does not include a custodian of a child if the child’s parent was actively serving in the United States armed forces and:

(1) The parent left the child with a custodial caretaker with the understanding that the custody was temporary while the parent discharged his or her duties of military service;

(2) The parent regularly contributes to the financial support of the child, even if not in an amount sufficient to fully financially support the child;

(3) The parent has maintained contact with the child during the time of military service, as much as possible and appropriate; and

(4) The parent seeks to regain custody of the child and establish a parent-child relationship as soon as possible after being assigned to duties that permit a child being cared for in the parent’s home.

(b) In any case involving custody of a child pursuant to this part, an individual may petition the court to be declared a de facto custodian of the child. If the court determines by clear and convincing evidence that the individual is a de facto custodian and any one of the circumstances in subsection (c) are present, then there shall be a rebuttable presumption that it is in the best interest of the child to remain in the custody of the de facto custodian.

(c) Any one (1) of the following circumstances satisfies subsection (b):

(1) The parents have willfully abandoned the child for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older;

(2) The parents have engaged in conduct that may adversely harm the child;

(3) The child may suffer adverse harm if removed from the de facto custodian's continued care; or

(4) There is a prior court order awarding custody to a party other than the parents.

(d) In any case involving custody of a child and a de facto custodian, the court shall determine child custody in accordance with the best interest of the child. The court shall consider all the relevant factors, including all other factors listed in this chapter as relevant to the best interests of the child, as well as:

(1) The wishes of the parents, child, and de facto custodian as to custody;

(2) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;

(3) The intent of the parent or parents in placing the child with the de facto custodian;

(4) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence, and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school;

(5) The relationship the child has cultivated with any person, including a family member or children of the de facto custodian;

(6) The child's adjustment to home, school, and community, and the length of time the child has spent in that home, school, and community;

(7) The permanence, as a family unit, of the existing or the proposed custodial home;

(8) The mental and physical health of all persons involved, to the extent applicable to the best interests of the child;

(9) The capacity and disposition of the parties to give love, affection, and guidance, and to continue educating and raising the child in the cultural background and religion in which the child has been primarily raised;

(10) The effect on the child of the actions of any abuser; and

(11) The criminal history or history of alcohol and drug abuse of any person, including the de facto custodian, seeking custody.

(e) After considering all the relevant factors, the court may award custody to a parent, both parents or a de facto custodian, or may award joint custody to any combination of these persons. If custody or joint custody is granted to a de facto

custodian, the de facto custodian shall have legal custody for all purposes under the laws of this state.

SECTION 2. This act shall take effect July 1, 2008, the public welfare requiring it.